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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,798	10/28/2005	Luis F Angel	5660-01207	5366
35690 7590 10/28/2008 MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398				
EXAMINER YABUT, DIANE D				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
10/28/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/529,798

Applicant(s)

ANGEL, LUIS F

Examiner

DIANE YABUT

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29, 31, 33, 34, 38, 42, 45, 46, 48-54, 56, 60 and 61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29, 31, 33, 34, 38, 42, 45, 46, 48-54, 56, 60 and 61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/22/2008 has been entered.

Double Patenting

2. Applicant is advised that should claim 29 be found allowable, claim 56 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 29, 42, 45-46, 48-51, 54, 56, and 60-61 are rejected under 35 U.S.C. 102(b) as being anticipated by **Heyn** (U.S. Patent No. **5,201,757**).

Claims 29, 50, 56, and 60-61: Heyn discloses a first conduit **44**, wherein at least a portion of an endoscope or bronchoscope, having at least a portion that is partially flexible, may be positionable in the first conduit during use, and wherein the first conduit is sized to allow an endoscope or bronchoscope to move through the first conduit, and a second conduit **20**, wherein at least a portion of the first conduit is positionable in the second conduit, wherein the second conduit is configured to contain at least a portion of a stent **18** between the distal ends of the first and second conduits, and wherein the second conduit is configurable to releasably position the stent in a body lumen or air passage during use (Figure 1, col. 5, lines 15-23). The distal end of the second conduit **20** is configured to expose the stent **18** upon retracting proximally (col. 6, lines 23-27).

Claim 42: Heyn discloses a stop **54** positioned approximate the distal end of the stent delivery system between the first and second conduits, wherein the stop is configured to inhibit movement of the stent in a proximal direction relative to the first conduit (Figure 1, col. 5, lines 55-58).

Claims 45-46: Heyn discloses at least a portion of the first and second conduits being partially flexible (col. 2, lines 31-35).

Claims 48-49: Heyn discloses at least a portion of the first and second conduits being configured to inhibit collapse of the first and second conduits upon removal of an endoscope during use (col. 5, lines 63-67 to col. 6, lines 1-5).

Claim 51: Heyn discloses the stent comprising a pulmonary stent, as in is capable of being deployed into pulmonary artery (col. 5, lines 43-54).

Claim 54: Heyn discloses the second conduit comprising a polymer (col. 5, lines 15-18).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heyn (U.S. Patent No. 5,201,757) in view of Bui (U.S. Patent No. 6,629,981).

Claim 31: Heyn discloses the claimed device except for a first lock configurable to inhibit movement of the first conduit relative to the second conduit during use, and a second lock configurable to inhibit movement of the endoscope relative to the first conduit during use.

Bui teaches a first lock **110** configurable to inhibit movement of a first conduit relative to a second conduit during use, and a second lock configurable to inhibit movement of the endoscope **124** relative to the first conduit during use (Figures 11, 15-17, and col. 9, lines 43-52 and col. 11, lines 8-19). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a first lock and a second lock, as taught by Bui, to Heyn since it was known in the art that undesirable axial movement of coaxial conduits, or sleeves, results in difficult or undesirable deployment or lack of visibility, and therefore inhibiting movement between first and second conduits facilitates deployment of the stent.

7. Claims 33-34 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Heyn** (U.S. Patent No. **5,201,757**) in view of **Gunderson** (U.S. Patent No. **5,776,142**).

Claims 33-34: Heyn discloses the claimed device except for a lock configurable to inhibit movement of the first conduit relative to the second conduit during use, wherein the lock comprises a first grip coupled to at least a portion of the first conduit, and a second grip coupled to at least a portion of the second conduit, and one or more pins coupled to the first conduit, wherein at least one of the pins is configurable to inhibit portions of the first and second conduits from moving transversely to each other wherein at least a portion of the first grip is configurable to inhibit movement of the second grip in a direction toward a proximal end of the stent delivery system beyond the portion of the first grip.

Gunderson teaches a lock configurable to inhibit movement of the first conduit relative to the second conduit during use, wherein the lock comprises a first grip **20** coupled to at least a portion of the first conduit, and a second grip **30** coupled to at least a portion of the second conduit, and one or more pins **28** coupled to the first conduit, wherein at least one of the pins is configurable to inhibit portions of the first and second conduits from moving transversely to each other wherein at least a portion of the first grip is configurable to inhibit movement of the second grip in a direction toward a proximal end of the stent delivery system beyond the portion of the first grip (Figure 1, col. 5, lines 7-16). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a lock to inhibit movement of the first conduit relative to the second conduit, as taught by Gunderson, to Heyn since it was known in the art that the movement of the first or inner conduit relative to the second or outer conduit should be controlled so that undesirable deployment or expansion of the stent may be prevented.

Claim 53: Heyn discloses the claimed device except for the first conduit comprising a polymer.

Gunderson teaches a first conduit comprising a polymer (col. 5, lines 43-48). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a first conduit comprising a polymer, as taught by Gunderson, to Heyn since it was known in the art that polymer is a biocompatible, flexible material.

8. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Heyn** (U.S. Patent No. **5,201,757**) in view of **Mikus** (U.S. Patent No. **6,093,194**).

Claim 38: Heyn discloses the claimed device except for a lock configurable to inhibit movement of the first conduit relative to the second conduit during use, wherein the lock comprises a clamp.

Mikus teaches a lock configurable to inhibit movement of a first conduit **70** relative to the second conduit **75** during use, wherein the lock comprises a clamp **77, 78** in order to prevent premature proximal displacement during insertion of the conduits into the body lumen (Figure 7, col. 7, lines 54-67 to col. 8, lines 1-8). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a clamp lock, as taught by Mikus, to Heyn in order to prevent premature proximal displacement of the conduits during insertion into body lumen.

9. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Heyn** (U.S. Patent No. **5,201,757**) in view of **Quiachon** (U.S. Pat. No. **5,938,623**).

Claim 52: Heyn discloses the claimed device except for the first conduit comprising a coiled spring.

Quiachon teaches a first conduit **42** comprising a coiled spring **61** (Figure 2). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a coiled spring, as taught by Quiachon, to Heyn since it was known in the art that coiled springs used with conduits, sleeves, sheaths or catheters act as dampeners or absorb vibration along the length of a catheter.

Response to Arguments

10. Applicant's arguments filed 09/22/2008 have been fully considered but they are not persuasive.

11. The applicant generally argues Heyn discloses separation of the outer sleeve which is not required by applicant's device. However, the claims recite the second conduit being movable with respect to the first conduit to expose the stent, which is clearly disclosed by Heyn. Therefore, Heyn meets all limitations of the claims.

12. Applicant also argues that Heyn does not disclose inhibiting the collapse of a first or second conduit. However, as disclosed in col. 5, line 63 to col. 6, line 5 in Heyn, the presence of friction between the stent and the inner sleeve and the stent and the outer sleeve suggests that the surfaces resist movement relative to the opposing surface and combined with their sufficient rigidity, it is reasonable to consider that the first and second conduits would not or shift or collapse or cave in upon removal of an endoscope during use.

13. Applicant argues that Bui does not teach a second lock configurable to inhibit movement of the endoscope relative to the first conduit during use. However, a lock is any device or part that temporarily stops the motion of a mechanism. In Bui, as maintained above, the endoscope **124** is locked, or is inhibited from moving, relative to the main body **102** as well as the first conduit during use (Figures 11, 15-17, and col. 9, lines 43-52 and col. 11, lines 8-19).

14. Applicant argues that Gunderson does not appear to teach one or more pins coupled to the first conduit, wherein at least one of the pins is configurable to inhibit

portions of the first and second conduits moving transversely to each other, but rather teaches a configuration that promotes movement of the components relative to one another. However, as maintained above, Gunderson does teach pins or protrusions (threads) **28** that allow movement but also prevent movement of first and second concentric conduits relative to one another (Figure 1, col. 5, lines 7-16). Threads are well known in the art as locking mechanisms.

15. Lastly, applicant also argues that Mikus and Quiachon do not teach a clamp configurable to inhibit movement of the first conduit relative to the second conduit or the first conduit comprising a coiled spring, respectively. The examiner disagrees. Again, as maintained above, Mikus teaches a clamp **77, 78** that prevents premature proximal displacement during insertion of the conduits into the body lumen (Figure 7, col. 7, lines 54-67 to col. 8, lines 1-8) and Quiachon teaches a first conduit **42** comprising a coiled spring **61** (Figure 2).

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANE YABUT whose telephone number is (571)272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Diane Yabut/
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731